

Maine Revised Statutes
Title 18-A: PROBATE CODE
Article :

§5-408-A. TEMPORARY CONSERVATOR

(a). When a person is alleged to be in need of protection and an emergency exists and no other person appears to have authority to act in the circumstances, upon appropriate petition, the court may exercise the power of a conservator or may enter an order, ex parte or otherwise, appointing a temporary conservator in order to prevent serious, immediate and irreparable harm to the health or financial interests of the person alleged to be in need of protection and to preserve and apply the property of the person to be protected as may be required for that person's benefit or the benefit of that person's dependents. The petition must be accompanied by an affidavit that sets forth the factual basis for the emergency and the specific powers requested by the proposed conservator. In the order and in the letters of temporary conservatorship, the court shall specify the powers and duties of the temporary conservator, limiting the powers and duties to those necessary to address the emergency.

(1). Except as otherwise provided in this section, prior to filing a petition under this subsection the petitioner shall provide notice orally or in writing to the following:

- (i) The person alleged to be in need of protection and the person's spouse, parents, adult children and any domestic partner known to the court;
- (ii) Any person who is serving as guardian or conservator or who has care and custody of the person alleged to be in need of protection; and
- (iii) In case no other person is notified under subparagraph (i), at least one of the closest adult relatives of the person alleged to be in need of protection or, if none, an adult friend, if any can be found. [2005 , c . 625 , §3 (NEW) .]

(2). Notice under paragraph (1) must include the following information:

- (i) The temporary authority that the petitioner is requesting;
- (ii) The location and telephone number of the court in which the petition is being filed; and
- (iii) The name of the petitioner and the intended date of filing. [2005 , c . 625 , §3 (NEW) .]

(3). The petitioner shall state in the affidavit required under this subsection the date, time, location and method of providing the required notice under paragraph (1) and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-405 do not apply to this section. [2005 , c . 625 , §3 (NEW) .]

(4). Notice is not required under this subsection in the following circumstances:

- (i) Giving notice will place the person alleged to be in need of protection at substantial risk of abuse, neglect or exploitation;
- (ii) Notice, if provided, would not be effective; or
- (iii) Other good cause as determined by the court. [2005 , c . 625 , §3 (NEW) .]

(5). If, prior to filing the petition, the petitioner did not provide notice as required under this subsection, the petitioner must state in the affidavit the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order. [2005 , c . 625 , §3 (NEW) .]

[2005 , c . 625 , §3 (AMD) .]

(a-1). If the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a), then the court, within 2 days, excluding Saturdays, Sundays and legal holidays, of taking the action, shall appoint a visitor or a guardian ad litem to visit the protected person and make a report to the court within 10 days of the appointment of the visitor or guardian ad litem. The visitor or guardian ad litem shall serve the protected person with a copy of the order appointing the temporary conservator and shall explain the meaning and consequences of the appointment. The visitor or guardian ad litem shall inquire of the protected person whether that person wishes to contest any aspect of the temporary conservatorship or seek any limitation of the temporary conservator's powers. The visitor or guardian ad litem shall advise the protected person of that person's right to contest the temporary conservatorship by requesting an expedited hearing under subsection (b) and shall advise the protected person of that person's right to be represented by counsel of that person's own choice or by counsel appointed by the court. The visitor or guardian ad litem shall also interview the temporary conservator, except in cases where the court itself has taken action to exercise the powers of a temporary conservator. In the report to the court, the visitor or guardian ad litem shall inform the court that the protected person has received a copy of the order appointing the temporary conservator and shall advise the court if circumstances indicate that the protected person wishes to contest any aspect of the temporary conservatorship or seek a limitation of the temporary conservator's powers and whether the protected person is already represented by counsel. The visitor or guardian ad litem shall also advise the court whether any issue exists with respect to whether the appointment of the temporary conservator is in the protected person's best interest.

[2005, c. 625, §4 (AMD) .]

(b). If the court has exercised temporary guardianship powers or has issued an ex parte order under subsection (a), and if it comes to the court's attention, through the report of the visitor or guardian ad litem or otherwise, that the protected person wishes to contest any aspect of the temporary conservatorship or to seek a limitation of the temporary conservator's powers, or if it appears that there is an issue with respect to whether the temporary conservatorship is in the protected person's best interest, the court shall hold an expedited hearing within 40 days of the signing of the ex parte order under subsection (a). The court may continue the expedited hearing if the petitioner and the attorney for the protected person, or, if none, the visitor or guardian ad litem, agree to such a continuance. The court may continue the hearing on its own motion due to circumstances beyond the control of the court and the parties, provided the hearing is held within 60 days of the signing of the ex parte order. If the appointment of a conservator is contested by the protected person and the person is not already represented by an attorney, the court shall appoint counsel to represent the person in the proceeding. The cost of the appointment of the visitor, guardian ad litem or attorney must be paid from the estate of the protected person if the court is satisfied that sufficient funds are available. At that hearing, the petitioner has the burden of showing, by a preponderance of the evidence, that temporary conservatorship continues to be necessary to protect and preserve the person's estate pending final hearing. Notice of the expedited hearing must be served as provided in section 5-405, except that the notice must be given at least 5 days before the expedited hearing, and notice need not be served on any person whose address or present whereabouts is unknown and can not be ascertained by due diligence. The court may waive service of the expedited hearing on any person, other than the person to be protected, upon a showing of good cause.

[1995, c. 203, §7 (AMD) .]

(c). At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue for a period not to exceed 6 months from the date of entry of the ex parte order. The temporary conservatorship terminates on the date specified in the order or, if no date is specified in the order, 6 months following the date of entry of the ex parte order, or at any prior time if the court determines the circumstances leading to the order for temporary conservatorship no longer exist or if a judgment has been entered following a hearing pursuant to section 5-407 with findings made pursuant to section 5-401.

[2009, c. 349, §8 (AMD) .]

(d). If the court denies the request for an ex parte order pursuant to subsection (a), the court may enter, in its discretion, an order for an expedited hearing pursuant to subsection (b). If the petitioner requests the entry of an order of temporary conservatorship pursuant to subsection (a) without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsection (b).

[1993, c. 652, §7 (NEW) .]

(e). If an appointed conservator is not effectively performing that conservator's duties and the court finds that an emergency exists that requires the appointment of a temporary successor conservator in order to preserve and apply the property of the protected person for the protected person's benefit or the benefit of the protected person's dependents, it may appoint, with or without notice, a temporary successor conservator for the protected person for a specified period not to exceed 6 months.

[1993, c. 652, §7 (NEW) .]

(f). A temporary conservator has all the powers of a permanent conservator provided in this code, unless expressly limited by the court. A temporary successor conservator has the same powers as the previously appointed conservator, unless the court indicates otherwise in the letters of appointment. The authority of a previously appointed conservator is suspended as long as the temporary conservator has authority. A temporary conservator may be removed at any time. A temporary conservator shall account to the court at the termination of the temporary conservatorship.

[1993, c. 652, §7 (NEW) .]

(g). A petition for temporary conservatorship may be brought before any judge if the judge of the county in which venue properly lies is unavailable. If a judge other than the judge of the county in which venue properly lies acts on a petition for temporary conservatorship, that judge shall issue a written order and endorse upon it the date and time of the order. The judge shall then immediately transmit or cause to be transmitted that order to the register of the county in which venue properly lies. An order issued by a judge of a county other than the county in which venue properly lies is deemed to have been entered in the docket on the date and at the time endorsed upon it.

[1995, c. 203, §8 (NEW) .]

SECTION HISTORY

1993, c. 652, §7 (NEW). 1995, c. 203, §§6-8 (AMD). 1997, c. 35, §2 (AMD). 2005, c. 625, §§3,4 (AMD). 2009, c. 349, §8 (AMD).

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